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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO.       |
|---|-------------|----------------------|-------------------------|------------------------|
| 10/524,816  | 08/30/2005  | Thomas Marotzke      | 076326-0300             | 1994                   |
| 22428 7590 11/16/2007<br>FOLEY AND LARDNER LLP<br>SUITE 500<br>3000 K STREET NW<br>WASHINGTON, DC 20007 |             |                      | EXAMINER<br>ILAN, RUTH  |                        |
|   |             |                      | ART UNIT<br>3616        | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>11/16/2007 | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/524,816

**Applicant(s)**

MAROTZKE, THOMAS

**Examiner**

Ruth Ilan

**Art Unit**

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/18/05, 7/18/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. The preliminary amendment of 2/18/05 is acknowledged. An action on the merits follows:

#### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Specification***

3. The disclosure is objected to because of the following informalities: In the specification, on page 1, line 3, and p2, lines 18-19 the references to claim 1 should be removed because this is contrary to US practice, and the claim may change during the course of prosecution. Additionally, in the last line of claim 5, "high" should be "half".

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Claim 1 recites the limitation "a gas generator, in particular having a tubular gas generator", this recitation amounts to a broad limitation followed by a narrow limitation. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly

set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation a gas generator, and the claim also recites a tubular gas generator which is the narrower statement of the range/limitation. Claim 2 is problematic because it recites "a closure element" for each outflow opening. Since closure elements were previously recited in claim 1, it is unclear if these are intended to be additional elements. In claim 3, "the closure element" is unclear, because there are possibly several closure elements. The examiner suggests amended claim 3 so that in line 2, "the closure element" is "each closure element" and "the outflow openings" is "the respective outflow openings". Claim 5 is problematic because it fails to further limit claim 1, in that the gas generator has already been recited as tubular in claim 1. Additionally, it is a broader recitation than claim 1 because it doesn't require closure elements, since the module housing bears against the outflow openings. Regarding claim 8, in line 3, "the generator housing lacks antecedent basis". Claim 9 is unclear because it recites a possible situation "when a

cylindrical tubular gas generator is used" but only as a possibility, so that the scope is unclear. In claim 11, line 2, "the retaining plate" lacks antecedent basis. **Claim**

***Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop et al. (US 5,472,229.) Bishop teaches an airbag module having a tubular gas generator (see US 5,076,607 A, which is incorporated by reference and shows a tubular gas generator) The gas generator has a plurality of outflow openings (16) at least one of which is closed after installation by a closure element (60.) The closure element can fairly be termed a stopper, or a cylindrical lug, and has the diameter of the outflow opening (see Figure 7) Regarding claim 11, since it depends from claim 1, and absent any further recited structural details, element 50 can fairly be termed a retaining plate.

7. Claims 1 - 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Einsiedel et al. (US 6,318,754.) Einsiedel et al. teaches an airbag module having a tubular gas generator (11) with outflow openings (12) at least one of which is closed by a closure element (16) The closure element can be fairly termed a stopper, or cylindrical lug and has the diameter of the outflow opening. Absent any, further structural limitation, it can also be termed a bead. Regarding claims 8 and 9, the module housing 13, and

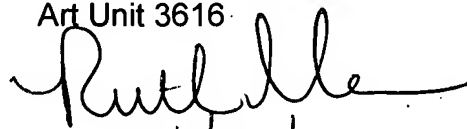
retainer plate 22 are cylindrical half shells. Plate 22, as broadly recited in claim 11, is a retainer plate, and can also be considered part of the housing.

8. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (US 6,152,484 A.) Fischer et al. teaches a tubular gas generator (13) with outflow openings (3) at least one of which is closed by a closure element (19) The closure element can be fairly termed a stopper, or cylindrical lug and has the diameter of the outflow opening. Absent any, further structural limitation, it can also be termed a bead. Regarding claims 8 and 9, as seen in Figure 2, the housing and retainer plate both include cylindrical half shells.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Ilan whose telephone number is 571-272-6673. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ruth Ilan  
Primary Examiner  
Art Unit 3616



11/12/07